

Message

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**From:** McIntosh, Chad [mcintosh.chad@epa.gov]  
**Sent:** 7/20/2020 5:22:08 PM  
**To:** Mason, Scott [Mason.Scott@epa.gov]  
**Subject:** FW: McGirt -- Comments on Draft SAFETEA Letter  
**Attachments:** doc - 2020-07-15 - murphy (final - agreement-in-principle) (1).pdf; OklahomaDraftLetter.docx

Close hold – this is what I called about

W.C. McIntosh  
Assistant Administrator  
International and Tribal Affairs  
United States Environmental Protection Agency  
202-564-6600

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**From:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Sent:** Monday, July 20, 2020 12:58 PM  
**To:** McIntosh, Chad <mcintosh.chad@epa.gov>  
**Cc:** Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** FW: McGirt -- Comments on Draft SAFETEA Letter

Chad, we will not be sending this email, but I wanted to give it to you for background. We'll be discussing these issues with DOJ further today.

Thanks, Matt

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
Office: (202) 564-8040  
Cell: (202) 594-7437

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**From:** Siegal, Tod <Siegal.Tod@epa.gov>  
**Sent:** Friday, July 17, 2020 3:11 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>  
**Cc:** Willey, Katharine <willey.katharine@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>  
**Subject:** RE: McGirt -- Comments on Draft SAFETEA Letter



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murphy (final - a...



OklahomaDraftL...

# **Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

Tod Siegal  
U.S. EPA, Office of General Counsel  
Cross-Cutting Issues Law Office  
202-564-5552

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**From:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Sent:** Friday, July 17, 2020 2:46 PM  
**To:** Siegal, Tod <Siegal.Tod@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>  
**Cc:** Willey, Katharine <willey.katharine@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>  
**Subject:** RE: McGirt -- Comments on Draft SAFETEA Letter

Hi Tod,

I have a call with Jeff Clark this afternoon and I got an inquiry from the State. Do you have any progress on our draft?

Thanks, Matt

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
Office: (202) 564-8040  
Cell: (202) 594-7437

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**From:** Siegal, Tod <Siegal.Tod@epa.gov>

**Sent:** Wednesday, July 15, 2020 6:16 PM

**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>

**Cc:** Willey, Katharine <willey.katharine@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

**Subject:** McGirt -- Comments on Draft SAFETEA Letter

<< File: SAFETEA.OklahomaRequest.10211(a).EPAComments.docx >> << File: SAFETEA.Section10211.doc >>

Matt: Following on our discussion re: *McGirt* and Oklahoma's request under SAFETEA, we have added a few suggested edits to the State's draft letter, as well as a few bubble comments/questions. They are attached (along with the SAFETEA statutory language) for your consideration. We were working off of the draft letter you had shared last week. As we discussed, it's possible that an updated version is circulating within the State. In addition to the comments in the draft letter, below are a few thoughts we're flagging for your awareness and for further discussion at our internal meeting on Thursday.

# Ex. 5 Attorney Client (AC)

We look forward to continuing the discussion tomorrow. Thanks.

Tod Siegal  
U.S. EPA, Office of General Counsel  
Cross-Cutting Issues Law Office

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**From:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

**Sent:** Tuesday, July 14, 2020 4:07 PM

**To:** Marshall, Tom <marshall.tom@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>

**Cc:** Willey, Katharine <willey.katharine@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

**Subject:** RE: McGirt Decision

Thanks Tom. This confirms my understanding that this issue is moving quickly. I would like any recommendations on edits to the letter as soon as possible.

Matt

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**From:** Marshall, Tom <marshall.tom@epa.gov>

**Sent:** Tuesday, July 14, 2020 3:51 PM

**To:** Gustafson, Adam <Gustafson.Adam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>

**Cc:** Willey, Katharine <willey.katharine@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

**Subject:** FW: McGirt Decision

Hi, all. We wanted to be sure to share Suzanne's intel, below, with the FO -- i.e., that the SAFETEA letter is apparently on the Governor's desk for signature. Given that development, and Suzanne's framing below, we also wanted to share our staff view that although we still have plenty of questions, we can't really say there are any "showstoppers" at this point. (Tina, please feel free to amend any of this.)

## Ex. 5 Deliberative Process (DP)

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202.440.9182

-----Original Message-----

**From:** Smith, Suzanne <Smith.Suzanne@epa.gov>

**Sent:** Tuesday, July 14, 2020 2:42 PM

**To:** Simons, Andrew <Simons.Andrew@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>

**Subject:** RE: McGirt Decision

I just spoke with Rob Singletary, ODEQ's General Counsel. Although he is out of town, his understanding is that the letter is currently on the Governor's desk waiting for signature. Were there any concerns beyond the scope of the programs listed that were show stoppers?

-----Original Message-----

From: Simons, Andrew <[Simons.Andrew@epa.gov](mailto:Simons.Andrew@epa.gov)>

Sent: Tuesday, July 14, 2020 1:20 PM

To: Jefferson, Tricia <[Jefferson.Tricia@epa.gov](mailto:Jefferson.Tricia@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Siegal, Tod <[Siegal.Tod@epa.gov](mailto:Siegal.Tod@epa.gov)>; Smith, Suzanne <[Smith.Suzanne@epa.gov](mailto:Smith.Suzanne@epa.gov)>; Alvarado, Tina <[Alvarado.Tina@epa.gov](mailto:Alvarado.Tina@epa.gov)>

Subject: FW: McGirt Decision

FYI (Not a surprise, so we'll just do the best we can at the moment and explain where we are in terms of engaging with program offices on some of these questions).

Andrew Simons  
Acting Associate General Counsel  
Cross-Cutting Issues Law Office  
U.S. Environmental Protection Agency  
Tel. 202-564-3649  
WJC-N 7526E

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-----Original Message-----

From: Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>

Sent: Tuesday, July 14, 2020 2:15 PM

To: Simons, Andrew <[Simons.Andrew@epa.gov](mailto:Simons.Andrew@epa.gov)>; Siegal, Tod <[Siegal.Tod@epa.gov](mailto:Siegal.Tod@epa.gov)>; Jefferson, Tricia <[Jefferson.Tricia@epa.gov](mailto:Jefferson.Tricia@epa.gov)>

Cc: Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Gustafson, Adam <[Gustafson.Adam@epa.gov](mailto:Gustafson.Adam@epa.gov)>

Subject: FW: McGirt Decision

Andy, passing along some questions from Chad that I hope we can get into on Thursday in addition to the SAFETEA issue. The State will need answers right away on how we are going to treat the current status.

-----Original Message-----

From: Leopold, Matt (OGC)

Sent: Tuesday, July 14, 2020 2:13 PM

To: McIntosh, Chad <[mcintosh.chad@epa.gov](mailto:mcintosh.chad@epa.gov)>

Cc: Zimmer, Nathaniel <[zimmer.nathaniel@epa.gov](mailto:zimmer.nathaniel@epa.gov)>; Mason, Scott <[Mason.Scott@epa.gov](mailto:Mason.Scott@epa.gov)>; Fotouhi, David <[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)>

Subject: RE: McGirt Decision

Hi Chad,

These are good questions. The first step is to understand whether the state will pursue the SAFETEA authority. Retroactivity of prior actions and what the state of OK's authority is at present are questions we are working through.

Thanks, Matt

-----Original Message-----

From: McIntosh, Chad <[mcintosh.chad@epa.gov](mailto:mcintosh.chad@epa.gov)>

Sent: Tuesday, July 14, 2020 12:18 PM

To: Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>

Cc: Zimmer, Nathaniel <[zimmer.nathaniel@epa.gov](mailto:zimmer.nathaniel@epa.gov)>; Mason, Scott <[Mason.Scott@epa.gov](mailto:Mason.Scott@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

Subject: RE: McGirt Decision

I think a call would be helpful -- my request was, in part, generated after discussions with Doug, Scott, and Ken.

## **Ex. 5 Deliberative Process (DP)**

Chad

W.C. McIntosh

Assistant Administrator

International and Tribal Affairs

United States Environmental Protection Agency

202-564-6600